4412

SUPREME COURT OF THE UNITED STATES.

No. 224.

JOHN YONTZ, ADMINISTRATOR OF JOSÉ DOLORES PACHECO, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it remembered that on this twenty-first day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José Dolores Pacheco for the place named "Santa Rita" was presented and ordered to be filed and docketed with No. 60, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January* 15*th*, 1853.

In case No. 60, José Dolores Pacheco, for the place named "Santa Rita," the deposition of Salveo Pacheco, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *Feb.* 10*th*, 1853.

In the same case, the deposition of José Maria Covarrubias, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *Sept.* 2*d*, 1853.

Case No. 60 called; the counsel for the claimant read the evidence; argued, submitted, and taken under advisement by the board.

SAN FRANCISCO, *April* 25*th*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the majority of the board rejecting the claim.

(Vide page 35 of this Transcript.)

In the same case, Commissioner R. Aug. Thompson delivered his dissenting opinion.

(Vide page 37 of this Transcript.)

SAN FRANCISCO, *Aug.* 15*th*, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 41 of this Transcript.)

Petition.

Before the honorable the commissioners of the United States to ascertain and settle private land claims in the State of California.

José Dolores Pacheco, a citizen of said State, gives notice that he claims, by virtue of a grant from the Mexican nation, a tract of land in the county of Contra Costa, in said State, called Santa Rita, bounded and described as follows, to wit: Beginning at a certain spring, or go de agua, near the house of José Maria Amador; thence in a northerly and northeasterly direction along the foot of the sierra, or range of hills called the Sierra of San José, to a place called Palus Secos, or dead trees; thence by a certain dry creek or ravine to the foot of a small lake; thence in a direction of a high peak of the Sierra de las Golgones to the foot of said sierra; thence along the foot of said sierra to the head of the valley called the Cañada of the Pasajero; thence in a straight line to the beginning.

The claimant respectfully shows, that he acquired an incipient to said land by occupying the same in the year 1832; being a Mexican citizen, having served the nation many years as a soldier, and being entitled under laws to choose a location in the vacant domain.

That on the 19th of June, 1834, he petitioned for a grant of the same, in due form of law, to the then governor, Dn. José Figueroa; that untoward circumstances at that time caused his said demands to be postponed; that he renewed the same by petition to Governor Don Juan B. Alvarado on the 30th of November, 1835; that said governor, after making the proper inquiries and investigations, conceded said land to the claimant by a decree of the 10th April, 1839, and on the same day issued a patent, or title in form, for the same to the claimant; that said decree of concession was referred to the departmental assembly of California, and was approved and confirmed by an act of said assembly, passed on the 19th of May, 1840, and a testimonial of said approval given by the said governor by a decree of the 13th of June, 1840; that said title was duly registered by the secretary of said department in the archives of the government, and in the office of the prefect of the first district of California, and that the due and proper record of all the above proceedings exists in the archives of former governments of California.

Said land has been occupied by the claimant according to law, and the directions set forth in his said grant.

The number of acres in said tract is not known, the same never having been surveyed.

The tract has natural boundaries, well known and *early* defined.

There is no conflicting grant of said land, or any part thereof, in the knowledge of the claimant.

That said grant was made by Governor Alvarado, by virtue of his authority as governor to grant lands in the name and on behalf of the Mexican nation.

A copy of said grant, and a copy of its approval by the territorial departation, are herewith presented, ("marked A,") and a certified copy of all the above proceedings will be presented.

The claimant relies on the documentary testimony above mentioned, and such other testimony as he may be able to obtain.

The claimant respectfully asks for a speedy examination and order of confirmation of his said claim.

JONES, TOMPKINS & STRODE,
Att'ys for Claimant.

Filed in office Feb'y 21st, 1852.

GEO. FISHER, *Sec.*

Deposition of Salvador Pacheco.

No. 60.

SAN FRANCISCO, *Jan'y 15th*, 1853.

On this day, before Commissioner Harry J. Thornton, came Salvio Pacheco, a witness in behalf of the claimant, José Dolores Pacheco, petition No. 60, and was duly sworn, his evidence being interpreted by the secretary.

Salvio Pacheco, a witness on behalf of the claimant, in reply to interrogatories put by the counsel for the claimants, testified as follows:

The associate law agent was notified, and was present.

My name is Salvio Pacheco; I am fifty-five years of age; I am a native of California, and have always resided in California; my present residence is Monte del Diablo, which is the name of my rancho in Contra Costa county. I am acquainted with the rancho which was granted to my brother, Dolores Pacheco, situated on the Tasajaro creek, in the county of Contra Costa, and which is the same land claimed in the present case. He has occupied said tract with his cattle for many years; he has had a house upon it for about ten or twelve years, occupied by a manager. He had cattle upon it, in company with Señors Amador, before that time. It is about ten or twelve years since he divided his cattle from Amador's, and has occupied this tract exclusively—Amador withdrawing his to the land granted to him.

SALVADOR PACHECO.

U. S. law agent present.

Sworn to and subscribed before me, this 15th of Jan'y, 1853.

HARRY J. THORNTON,
Comm'r.

Filed in office Jan'y 15th, 1853.

GEO. FISHER, *Sec.*

Deposition of Jose Maria Covarrubias.

No. 60.

SAN FRANCISCO, *Feb'y 10th*, 1853.

On this day, before Com'r Hiland Hall, came José Maria Covarrubias, a witness in behalf of the claimant, José Dolores Pacheco, petition No. 60, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is José Ma. Cavarrubias; my age is forty-four years; I reside at Santa Barbara.

I held the office of secretary of the prefectureship of the first district of Upper California in April, 1839.

A paper is now shown me, being a traced copy from the office of the surveyor general, and being exhibit A filed in this case. I have compared pages 16, 17, 18, and 19 of said paper with the original in the office of said surveyor general, and find my signature at the bottom of page 19 to be my genuine signature. I signed my name to said paper as secretary to the prefectureship at the date which the paper bears.

I had the original of said paper at the time. The office was at San Juan Bautista, about twelve leagues from Monterey.

The original title which is now in the archives is a loose sheet, not attached to the espediente. It is the document which belongs to the party interested.

The title papers were sometimes sent to office of the prefect to be recorded by the interested parties or their friends, and sometimes were sent from the office of the secretary of the government at the request of the parties interested.

Sometimes the papers were left by said parties with the governor, and he sent them to the office for them.

They were generally left at the prefect's office by said parties themselves.

The espediente in the archives would be complete without the title paper before mentioned.

I am acquainted with the signature of Juan B. Alvarado and Manuel Jimeno, and their signature to said original title paper I believe to be genuine.

In answer to questions by the associate law agent, the witness says:

He has not any particular recollection of the presentation of the title paper before mentioned to the office of the prefect; that his signature is upon it, and it was undoubtedly presented.

JOSÉ MA. COVARRUBIAS.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office February 10th, 1853.

GEO. FISHER, *Sec'y.*

[1 S. D. K.]

Espediente.

Promomido por el ciudadano José Dolores Pacheco en pretencion de dos sitios de ganado mayor en el intermedio de la ex mision de S'n José y el Rancho del Cuodadano José Ma. Amador.

1837.

[128.]

[2 S. D. K.]

Jurisdiccion del Pueblo de S. José Guadalupe—Año de 1834.

Espediente.

Sobre el parage comprendido entre el "Arroyo" de la Tasagera y el sitio de S. Ramon solicitado por el C'no José Dolores Pacheco.

[3 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provisionalm'te por la administracion de la aduana maritima de Monterey para los año de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

José Dolores Pacheco soldado Mejicano y resid'te en el Pueblo de San José Guadalupe ante U. S. como mas haya lugar en derecho se presenta p'r este escrito en solicitud: ha dos sitios que mas o menos se cuenta en las orias del Tular del valle de S. José ge llaman asta el arroyo de la Tasagera dando al norte asta los limites segun demarca en el diseño del comand'te José Ma. Amador y para el sur tomando la rinconada del camino franscitorio hasta d'ho sitio: de Amador á rias del sausal y laguna mas p. dar cumplimiento de la ley que trata de terrenos acompaño el diseño conigual sertificado de quienes conocen este sitio que esta desocupado: en el cualtrato poner los bienes de campo q'e tenjo y es el numero de 40° reses y q'e p'a necesidad de terreno lo mantengo hienion del vecino d'ho Amador esta tanto seme conceda este: Por tanto A. V. S. suplico tenga en consideracion el merito que me considero tener y necesidad igual gracia justicia juro lo necesario, &c.

Pueblo de S. José, Junio 19, de 1834.

JOSÉ DOLORES PACHECO.

MONTEREY, *Junio* 23, *de* 1834.

De conformidad con las leyes de la materia informe el ayuntamiento del pueblo de San José Guadalupe si el interesado en esta instancia obtrenelos requisitos prevenidos p'a ser atendida en su solicitica: si el terreno q'e pretende esta comprendido en las veinte leguas limitrofes o diez litorales q'e espresa la ley de 18 de Agosto, de 1824, si code regadio temporal ó abrevadero si pertenece a la propiedad de algun particular mision corporacion o pueblo con todo lo de mas q'e crea con ducente por lustrar la materia.

[4 S. D. K.]

Evacuado que sea pasario este esped'te al R. P. Ministro de San José para q'e esponga lo q'e lo ocurra el S'or D. José Figueroa, general de brigada, comand'te general, inspector y gefé superior, politico de la Alta California, asi lo mando decreto y firmo de que doy fé.

AGUSTIN V. ZAMORANA, *S'rio.*

JOSÉ FIGUEROA.

En cumplimento del superior decreto q'e antecede: Digo q'e la parte interesada en esta instancia, obtiene los requisitos previnidos para ser atendido en mi solicitud es Mejicano con servicios a la Patria y Jabrados: bienes de campo: El terreno q'e pretende noesta comprendido en las 20 leguas limitrofes o 10 litorales q'e espresa la ley de 18 de Agosto, de 1824, y deregada temporal o abrevadero no pertenece á la propiedad de ningun particular mision corporacion ni pueblo, esta valdio la mision de San José la ocupo en un tiempo con ganado mayor sin ninguna necesidad y a cuya causa lo volvio a desocupar para eso espidianse a manos del R. P. M'yro de la mision de S. José segun esplica el superior decreto q'e antecede.

PEDRO CHABOYA.

[5 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provisionalm'te por la administracion de la aduana maritima del Monterey para lo años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

[6 S. D. K.]

S'or Gefe Superior Politico:

El terreno q'e en este espediente se solicita debo conforme al superior decreto de 23 de Junio, po. po. informar à V. S. no ser comprendido en los q'e se llaman valdios p'r esta mision lo ha poseido lo ha fructificado y actualm'te no solo lo fructifica sino le

es mas necesario p'e q'e enverner sus ganados menores p'r el sitio q'e ocupan en el verano, en llegando el Invierno fuera de su desabrigo quedan sin suficientes pastos. Esverdad que el postulant'e p'r su honrada y otras prendas q'e adornanes acreedor á este y mayores beneficios nacionales asi mismo el protesta q'e recibra siempre en el terreno q'e pide los ganados de la mision; p'l ya con esta servidumbre se les ha cedido el parage de S. Ramon al C'no José M'a Amador (con que el postulante tiene compaña,) y el de las pocitas al C'no Guillermo Gulnar y si alcora se cedo este aunq'e sea con la mision servidumbre q'e no se seguira de aqui ó q'e la mision de S. José sea perjudicada ò q'e hande mea degando con los exhavios lo q'e por si mismo debe tenor. Bien discrovio q'e el postulante y otros bien pueden clecor y anna seguorar con verdad q'e este terreno q'e se solicita escapas p'r los ganados de la mision y los del interesado p'r en un pais como este (y con unagente algo torpe) e mutel como los indigeners en donde no hay ni es facil dividor los terrenos con poperos capaces si secolo can ganados de distintos dueños, se mesctan se confundense perrden o extrabien con novolte peyuicio q'e serà de ambos interesados, no siendolo de la mision p'r q'e esta no puede poner la vigilancia y los esmeros q'e un particular pone. Por tanto suplico a U. S. el q'e este terreno no sea cedido alque hoy lo solicita; si no q'e sele premien suo servicios con otro terreno q'e absolutamte y con toda verdad esté valdio. Es lo q'e tengo q'e esponer mision de S. José y Julio 25, de 1834, T'ee T'e Ma. de Tenn, Gorv'o Monterey, Julio 29, de 1834, siendo perteneciente à la mision de San José el Torreno que pretende el ciudadano José Dolores Pacheco, no enando aun seculari sadas misiones y estando conferida por el supremo goberno á D'n José Maria Hijar la comision especial de distribuer estos terrenos; suspendare por alior a el curso de este espediente y hagase saber à la parte para los ocurros que le conbengan.

El Señor Don José Figueroa, general de brigada, comand'te general inspector y gefè, superior politico de la Alta California, asi lo mandò decretò y formo de q'e doy fee.

AUGUSTIN V. ZAMORANA, *S'ro.*

JOSÉ FIGUEROA.

[7 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provisionalm'te por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

En los que a bajo se firman con la seña o de la Cruz, certificamos q'e el terreno ha q'e solicita José Dolores Pacheco, asia de Gaguna

sausal y Corroyo de la Tasagera esta desocupado y q'e asi puede decoi en mi tiempo tubo gana dos la mision de S. José fue mi necesidad y p'l los fines necesarios dennos el presente certificado en el Pueblo de San José Guadalupe a 12 de Junio, de 1824.

JUAN MA. HERNANDEZ.

JUAN SOLO.
JOSE MA. ROSA.

[*For map see original, page* 12.]

[9 S. D. K.]

S'or Gefé Politico Interino:

Joses Dolores Pacheco vecino del Pueblo de San José ante V. S. como mas haya lugar en derecho ago presente q'e en el año 34 puse en el conocin'to del s'or gov'r del territorio finado Don José Figueroa la crecida necesidad que tenia de uno ó dos sitios de ganado mayor en el intermedio de la mision de S. José M'a Amador no luibo p'r entones decreto a mi fabor mandé q'e humildemente acompaño y como puede sevaya p'a decido el espediente original algun extravio en talconcepto debo la presente a la recta justificacion de U. S. por q'e si asi fuere me serba este de arreditano y original.

Vez me contraigo a la solicitud de dos sitios mas ó menos segun limites dee citada Amador p'r el norte y conocidos limites de la d'ha mision de S. José p'r el sur cullo diseño nuebam'te incluyo. Este terreno ha estado desocupado de muchos años antes de a quel tiempo en q'e lo solicite asta la f'ha y al ver que y a ha avido razones ciertas q'e el s'r comicionado de la citado mision hato ocuparlo con bienes de yo estoy en el caso de prefererle y poseerloya sin demorar mas de solo esperar la resolucion de la autoridad q'e p'a el caso requiere el derecho. Por tanto A. V. S. rendidamente suplico probea a favor dispensando la falta de papel sellado por que aqui no lo hay. Gracia y poro lo necesario, &c.

Pueblo de S. José Guadalupe, Nov'r 30, de 1837.

JOSÉ DOLORES PACHECO.

[10 S. D. K.]

MONTEREY, *Dec'r* 24, *de* 1837.

Informe el T. ayuntamiento de S. José vistos los antecedentes si el interesado en esta solicitud obtiene todo los requisitos legales para ser atendido si el torreno que pretendes valdio si no pertenece á la propiedad particular de alg'n individuo ó pueblo y por no halla si seculari ada la ex mision de S'n José y no haber tenido efecto la ex mision de D'n José M'a Hyar de que habla el decreto del S'r Figueroa de 29 de Julio de 1834 pue de adjudicarso en coloni-

sacion conforme a las leyes evacuados estas informaciones pasara este espediente al administrador de la citada ex mision p'a q'e informe y en segueda volvera al gob'o p'a sus resolucion.

ALVARADO.

[11 S. D. K.]

PUEBLO DE S. JOSÉ GUADALUPE, *Dec.* 27, *de* 1837.

En virtud del superior decreto q'e antecede esta f'he corporacion de le decir q'e la persona de Dolores Pacheco goza los linderos de el es vecino y natural del pais con sobrados bienes decampo p'a obtener sitio y q'e en la actualidad p'r ceyon q'e los vienes q'e tiene en el parajo y aviomado q'e esta con José M'a Amador esta contiguo p'r cuya causa se estienden al terreno q'e solicita. No pertenece a propiedad pueblo ni mision aunque por algunos años, asi q'e lo ocupo la mision de S. José en el dia esta desocupado p'r esa. El terreno q'e pretende no tiene las diez leguas litorales ni alcanza a las veinte limitrofes lo q'e espone al conocimieno de la superioridad y tengo el onordarle su debido lleno.

JUAN ALVAREZ.

Puede consedersele al interesado el terreno q'e solicita S. José, Feb'o 20, de 1833.

JOSÉ DE JESUS VALLEJO.

[12 S. D. K.]

MONTEREY, *Avril* 10, *de* 1839.

Vista la peticion con que da principio este espediente el informe de los Señores alcaldes del pueblo de San José y todo lo que ver convino de conformidad con lo dispuesto por las leyes y reglamentos de la materia se declara a D'n Dolores Pacheco dueño en propiedad del parago comprendido entre el Arroyo ó Cañada de la Tasagera y el sitio de S'n Ramon colindante con la casa del mision sitio de S'n Ramon colindante hasta los Palos secos y desde este punto tomando per el Tular a la loma alta con el Arroyo ó Carroda de d'ha Tasagera y con la Sierra y el Terreno del ciudadano en el diceño q'e corre en este espediente y bajo las condiciones con el titulo se espresan librese el despacho correspondiente tornese rayon en el libro respectivo y reservese este esped'te para conocimiento de la exma. junta departamental para su devida aprovacion asi el Señor Gobernador D'n Juan B. Alvarado, gobernador interino del departamento de las Californias, lo decreto mando y firmo de que doy feé.

ALVARADO.

MONTEREY, *Mayo* 12, *de* 1844.

Dada cuenta a la exma. junta departamental en cesion de este dia acordo que pase a la comision de agricultura.

JOSÉ T. FERNANDEZ.

[13 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provisionalm'te por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y cinco.

RAFAEL GONZALEZ.

FIGUEROA.

Monterey, Julio veinte yaneve de mil ochocientos treinta y cuatro siendo pertene cientes a la mision de San José a reserva q'e pretende el ciudadano José Dolores Pacheco no estando aun secularizados las misiones y estando conferida por el supremo gobierno a Don José Maria Hayar la comision especial de distribuer estos terrenos suspendase por ahora el curso de este esped'te y hagase saber a la parte para los ocurros q'e le convengan. El Señors Don José Figueroa, general de brigada, comad'te general inspector, y gefé superior politico de la Alta Californias asi lo mando decreto y firmo de que doy feé.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANA, *Secretario.*

Concuerda a la letra con su original del cual brize sacar el presente testimonio a pedimiento de la parte del ciudadano José Dolores Pacheco en Monterey a treinta de Julio de mil ochocientos treinta y cuatro siendo testigos los ciudadanos Bernando, Navarrete y Bonefacio de Madaurga de esta vecindad.

AGUSTIN V. ZAMORANA.

[14 S. D. K.]

En 19 del mismo lo devolvio la comision con el dictamen que se acompaña.

FERNANDEZ.

[15 S. D. K.]

Monterey, tiece de Junio de mil ochocientos cuarenta. En vista de la aprovacion otorgada en diez y nueve de Mayo del año po. po. por la ex'ma junta departamental librese testimonio de ella a la parte de Dn. José Dolores Pacheco, en confirmacion de terreno de entre la cañada de la Tasagera y el sitio de Sr. Ramon que obturo en dez de Abril de mil ochocientos treinta y nueve. El Sor. Don Juan B. Alvarado, gov. del departamento de las Californias, asi lo proveyo y firmo.

ALVARADO.

[*For map see original, page* 16.]

№ 224. Prage. 16 Mah. 19
10
P D K

[16 S. D. K.]

Juan B. Alvarado, Interino del Departamento de las Californias.

Par cuanto el C'o José Dolores Pacheco ha pretendido para su beneficios personal y el de su familiar el parago comprendido entre el arroyo a Cañada de la Tasagera el sitio de Sn. Ramon colindante con la casa del mismo Senr. Ramon hasta los palos secos y desde este punto tornando por el Tular a la Goma Alta con el arroyo o cañada de d'ha tasagera y con la sierra y el terreno del Cno. Bartolo Pacheco practicades previamente las diligencias y averiguaciones concernientes segun lo dispuesta por las leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el parago mencionado declarandole la propiedad de el por las presentes letras entendiendose dicha concesion con entera conformidad a lo dispuesto por las leyes a reserva de la abrobacion de la ex'ma junta departamental y del supremo gobierno bajolas condiciones siguientes: 1a. Podra cercalo sin perjudicar las travecias caminos y servidumbres lo disfrutara libre y esclusivam'te destinandolo al uso a cultivo que mas le acomode pero denbro de un año fabricara casa y estaria habitada. 2a. Cuando se le confirme la propiedad solicitara del prez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyo limites pondra a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad. 3a. El terreno que se le hace donacion es de la estencion que esplica el diseño que corre en el esped'te con sus limites respectivos; el juez que diere la posecion lo hara medir conforme a ordenanza para senalar los linderos que dando el sobrante q'e resulte a la nacion para los usos conbenientes. 4a. Si contraviniere a estas condiciones pardera su derecho al terreno y sera denunciable por otro. En consecuencia mando que serviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en libro a que corresponde y se entregue al interesado para su resguardo y de mas fines. Dado en Monterey a diez de Abril de mil ochocientos treinta y nuevo esten diendose este despacho en papel comino por no haber del sellado q'e corresponde.

JUAN B. ALVARADO.

MAN'L JIMENO,
S'rio del Despacho.

[19 S. D. K.]

Queda tomada razon de este despacho en el libro respectivo a fojas segunda y para constancia lo firmo Manuel Jimeno el Ex'mo Señor gobernador ha dispuesto se tome razon de este titulo en la prefectura del primer distrito.

JIMENO.

Queda tomada razon a fojas o vta. senalado con el No. 12 del

libro respectivo q'e obre en el archivo de la seria de la prefectura del primer distrito.

SAN JUAN DE CASTRO.

José Ma. Covarrubias. *S'rio.*

Abril 12 de 1839.

[20 S. D. K.]

Ex'mo S'or: La comision de agricultura en cargada de dictaminar sobre la concesion hecha en la persona del ciudo. José Dolores Pacheco visli lodo la actuado informes y demas q'e ver se ha podido poner a la deliveracion de V. E. los articulos siguientes: Art. 1a. Se aprueba la concesion hecta por el Ex'm S'or gobernador D. Juan B. Alvarado al terreno q'e espresa esta concesion con f'ha 10 de Abril de 1839. 2a. El gobierno departamental tendra a bien mendar espedar copia de esta superior aprobacion haciendo se derijo al interesa dop'a su satisfacion y conocimiento.

Monterey, Mayo 10 de 1840.

JOSÉ RAFAEL GONZALES.

Monterey, 19 de Mayo, 1840.

[21 S. D. K.]

En sesion de este dia aprobola E. junta departamental el articulo 1o del dictamen anterio reformando el 2o en los terminos siguientes que el presente exped'te buelva al E. S'r gobernador para los fines sig'tes.

T. FERNANDEZ, *S'rio.*

Manuel Jimeno, *Presid'te.*

Office of the Surveyor General
of the United States for California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and custody a portion of the archives *of the archives* of the former Spanish and Mexican territory of department of Upper California, do hereby certify that the twenty-one preceding and hereunto annexed pages of tracing paper, numbered from one to twenty-one, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents now on file, and forming part of the said archives in my office.

In testimony wherof, I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this second day of September, 1851.

SAM'L D. KING,
Surveyor Gen'l Cal.

Filed in office Septbr. 17th, 1852.

GEO. FISHER, *Secr'y.*

Translation of Espediente.

Expediente.

Carried on by the citizen José Dolores Pacheco, on application for two leagues of land on the place between the ex-mission of San José and the rancho of citizen José Maria Amador.

[1837.]

128.

Jurisdiction of the town of San José Guadalupe, in the year 1834.

Expediente.

For the place lying between the arroyo of La Tasajera and the site of San Ramon solicited by citizen José Dolores Pacheco.

Third Seal—Two Reales.

Provisionally qualified by the administration of the maritime custom-house of Monterey, for the years one thousand eight hundred thirty-four, and one thousand eight hundred and thirty-five.

RAFAEL GONSALEZ.

FIGUEROA.

Mr. Superior Political Chief:

José Dolores Pacheco, a Mexican soldier, residing in the town of San José Guadalupe, before your honor, in form of law, appears by this present on application for two leagues of land (sitios), computing more or less, on the margin of the (Tular) of the valley of San José, so-called, down to the creek of the Tasagera; at the north it runs towards the limits, as shown in the plan of the neighbor José Ma. Amador, and at the south taking the corner of the transitory road between said site of Amador on the margin of the "willow thicket" (sansol) and the "lagoon" (laguna); but, to comply with the land act, I annex the plan, together with the certificate of those who know this place to be unoccupied, wherein I think of keeping the stock of cattle that I have, which numbers 400 head, and which, for want of a tract of land, I keep in union with that of said Amador, until when the same is conceded to me; wherefore I pray your honor will take into consideration the merits that I consider I have, as well as the need of it; and I shall ever pray, &c.

Town of San José, June 19, 1834.

JOSÉ DOLORES PACHECO.

In compliance with the foregoing superior decree, I say that the party to this petition has the provided requisites to be attended to on his application; he is Mexican by birth, has served the country, and has cattle stock enough.

The tract he asks is not included in the 20 limitary leagues, nor

in the 10 littoral ones mentioned in the law of 18th of August, 1824; it is temporal, irrigated and pasture land; it does not belong to any private individual, mission, corporation, or town; it is vacant; the mission of San José occupied it for a time with black cattle without any necessity, and for the same reason has quitted it.

Pass this espediente to the Rev. Father minister of the mission of San José, as per the following superior decree.

PEDRO CHABOYO.

MONTEREY, *June* 23*d*, 1834.

In conformity with the laws on the matter, let the council of the town of San José Guadalupe report whether the party to this petition has the provided requisites to be attended to in regard to his application; whether the tract which he asks is included in the 20 limitary leagues, or the 10 littoral ones expressed by the law of 18th of August, 1824; whether it is farming land, irrigable or pasture land, and whether it belongs to any private individual, mission, corporation, or town, and all other matter they may deem leading to illustrate the subject. This being done, they shall pass this espediente to the Rev. Father minister of San José, in order that he state what may occur to him.

S'r Don José Figueroa, brigadier general commanding, inspector general and superior politic chief of the Upper California, thus ordered, decreed, and signed, which I testify.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANA,
Secretary.

To Superior Politic Chief:

The tract of land solicited in this espediente I have, according to the superior decree of the 23d of June last past, to inform your honor to be not included in those which are called vacant, as this mission has possessed it, has fructified, and, at present, not only fructifies it, but it is of much need to it to keep its black cattle in the winter, since, were not the place they occupy in the summer, on approaching the winter, for their protection, they would be left without sufficient pasture.

It is time that the postulent, for his honesty and other endowments with which he is adorned, is meritorious of this, and better national benefits; however, he promises to admit at all times on the place he asks, the cattle of the mission, certainly with the right of commons (servidurnte.) The place of S. Ramon was conceded to citizen José Ma. Amador (with whom the postulent is in company,) and that of las Royitas to citizen Guillermo Gulnar; but if this is now conceded, although with similar right, will it not follow hence either that the mission might be prejudiced, or that it with the losses (extravios) would have to beg what it ought to have?

I imagine much that the postulent and others may as well say, and even assure really, that this tract on application is able to hold the cattle of the mission, and that of the party interested; but in a county like this, (and with a people somewhat slow and unuseful as the Indians,) where there is not, nor is it easy to divide the lands with capable horse heads, and even cattle of distinct owners are mingled, thrown into confusion, lost, or mislead, with much prejudice, what will happen to both the parties? Nothing but only to the mission, as she cannot keep watch and careful attention as a private individual could. Wherefore I pray your honor that this tract may be not conceded to him who solicits it, but let his services be rewarded with some other tract that is absolutely and really vacant.

Mission of San José, July 25th, 1834.

FRIAR JOSÉ MA. DE JESUS GOMEZ.

MONTEREY, *July 29th*, 1834.

The tract that citizen José Dolores Pacheco asks being pertinent to the mission of San José, the missions not being as yet secularized, and the especial commission to distribute these lands being by the supreme government conferred on Don José Maria Heifar, let the proceedings of this expediente be at present suspended, and it be made known to the party for the purposes that may be convenient to him. S'or Don José Figueroa, brigadier general commandant, inspector general, and superior political chief of the Upper Californias, thus ordered, decreed, and signed, which I testify.

AGUSTIN V. ZAMORANO,
Secretary.

JOSÉ FIGUEROA.

We, the undersigned, with a mark of cross, certify the tract of land which José Dolores Pacheco solicits towards the lagoon (laguna,) saural (willows thicket,) and the creek of "la Lasagera," is unoccupied, and that if it can be said that the mission of San José kept cattle for a time, it was without necessity, and through the proper judges we give the present certificate in the town of San José Guadalupe, June 12th, 1834.

JUANA MA. FERNANDEZ.

JUAN SOTO. †
JOSÉ MA. ROSAS. †

Mr. Politic Chief ad interim:

José Dolores Pacheco, residing in the town of S. José, before your honor in form of law represents, that in the year '34 he put to the knowledge of the governor of the territory, the late Don José Figueroa, the great necessity he had for one or two leagues of land (sitios de ganado mayor) in the place lying between the mission of

S. José and the neighbors José Ma. Amadors; there was then no decree in my favor but that which I humbly annex hereto; and as it might have happened that the expediente is misled with such an apprehension, I bring up the present for justification by your honor, in order that should it be so, this may do to prove it and for original.

At this time I confine the application for two leagues, (sitios) more or less, according to the boundaries of said mission of S. José by the south, the plan of which I enclose herein again.

This tract was unoccupied for many years before the time when I solicited it up to the present; and on seeing that there are good reasons that the gentlemen commissioned by the said mission thinks of occupying it with her cattle stock, I ought to be preferred to him; and therefore, without further delay, I only hope the resolution of the authorities required of right in the case, wherefore I humbly pray your honor will please to defer it in my favor, excusing the lack of a sealed paper, and I shall ever pray, &c.

Town of José Guadalupe, Nov'r 30th, 1837.

JOSÉ DOLORES PACHECO.

MONTEREY, *Dec'r 24th*, 1837.

Let the honorable the council of San José report, in view of the foregoing proceedings, whether the party to this application has all the requisites of laws to be attended to; whether the tract he asks is vacant, and whether it does not belong to private property of any individual or town, and whether from the ex-mission of San José not being secularized, and the commission of D. José Ma. Hefar, of which the decree of Sen. Figueroa of the 9th of July, 1836, speaks, not having been carried into effect, it can be adjudicated for colonization according to law. These informations being made, this expediente shall be passed to the chairman of said commission, that he may report thereon; afterward it shall be returned to the government for its resolution.

ALVARADO.

TOWN OF S. JOSÉ GUADALUPE,
Dec'r 27th, 1837.

By virtue of the foregoing superior decree this m't excellent board has to state that the person of Dolores Pacheco enjoys the right of a citizen; he is a native of and residing in the country, with sufficient stock of cattle to obtain a place, and that he may actually possess it for the reason that the stock of cattle (bienes) *and* he has in the place is joined with that of José Ma. Amador, and it is contiguous, on which account they spread to the tract he solicits. It does not belong to the property of the town or mission, although the mission of S. José occupied it some years ago; on this day it is unoccupied by her. The tract he asks has not the 10 littoral leagues, nor does it reach the twenty limitary ones,

which is put to the knowledge of the superior authority. And I have the honor to be,

Respectfully,

JUAN ALVIREZ.

The tract of land solicited by the party interested may be conceded to him.

S. José, Feb'y 20th, 1839.

JOSÉ DE JESUS VALLEJO.

MONTEREY, *April* 10, 1839.

In view of the petition wherewith this expediente begins, of the report of the alcaldes of the town of San José, and all which ought to be viewed in conformity with the depositions of the laws and regulations on the matter, Don Dolorez Pacheco is declared owner in property of the place lying between the creek or ravine of "La Tasajera" and the place of San Ramon, bounded by the house of the same place of San Ramon down to the "dead trees" (palos secos), and from this point, taking by the Tulare to the high hill (Loma Alta), along the said creek or ravine of "La Tasajera," and along the range of hills (sierra), and the tract of citizen Bartolo Pecheco, as it is shown in the sketch running with this expediente, and under the conditions mentioned in the title.

Let a proper despatch be issued, an entry be made in the respective book, and this expediente be kept for the knowledge of the m't excellent departmental board for its duly approval. Don Juan B. Alvarado, governor ad interim of the department of the Californias, thus decreed, ordered, and signed, which I testify.

ALVARADO.

MONTEREY, *May* 12, 1844.

Account having been given to the m't excellent departmental board in session of this day, it resolved that this be passed to the committee on agriculture.

JOSÉ T. FERNANDEZ, *Sec'y.*

Monterey, July twenty-ninth, *on* thousand eight hundred and thirty-four.—The tract of land that citizen José Dolores Pacheco seeks to obtain being pertinent to the mission of San José, the mission not being as yet secularized, and the especial commission to distribute these lands being conferred by the supreme government on Don José Maria Hefar, let the proceedings of this expediente be for the mean time suspended, and it be made known to the party for the purposes that may suit him. Señor Don José Figueroa, brigadier general commandant, general inspector and superior politic chief of the Upper California, thus ordered, decreed, and signed, which I testify.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMARANO, *Secretary.*

It agrees literally with the original, of which I caused the present testimony to be taken out at the instance on the part of citizen José Dolores Pacheco, in Monterey, the thirtieth of July, one thousand eight hundred and thirty-four, citizens Bernardo, Naverat, and Bonifacio de Maderenga, of this vicinity, being witnesses.

AGUSTIN V. ZAMARANO.

On the 19th instant the commission returned the same with the accompanying opinion.

FERNANDEZ.

Monterey, June thirtieth, one thousand eight hundred and forty.—In view of the approval made on the nineteenth of May of the last year by the m't excellent departmental board, let a testimony thereof be issued to the party, Don José Dolores Pacheco, in confirmation of the tract of land between the ravine of La Tasagera (cañada de la Tasajera) and the place of San Ramon, which he obtained on the 10th of April, one thousand eight hundred and thirty-nine.

S'or Don Juan B. Alvarado, governor of the department of the Californias, thus directed and signed.

ALVARADO.

[SEAL.]

Juan B. Alvarado, Governor ad interim of the Department of the Californias.

Whereas citizen José Dolores Pacheco has sought to obtain for his personal benefit and that of his family the place lying between the "creek or ravine" of La Tasajera and the place of "San Ramon," bounded by the house of the same place of San Ramon down to the "dead trees" (palos secos), and from this point, taking by the "Tular" to the "high hill" (Loma Alta) along the creek or ravine of said Tasajera, and along the range of hills (sierra) and the land of citizen Bartolo Pacheco.

All steps and investigations concerning thereto having been previously taken according to the depositions of the laws and regulations, using the powers conferred on me, in the name of the Mexican nation, I have granted the said place, declaring to him the ownership thereof by these present letters; said concession to be understood to be fully in accordance with the depositions of the laws, reserving the approval of the m't excellent departmental board and of the supreme government, and under the following conditions:

1st. He may enclose it without injuring the passages, roads or commons; he shall enjoy it freely and exclusively, applying it to such use or cultivation that may suit best to him, but within one year he shall build a house, and the same shall be inhabited.

2d. When the ownership is confirmed to him he shall solicit the proper officer to give him juridicial possession, by virtue of this despatch, by whom the boundaries shall be marked out, in the limits of which he shall put, besides the landmarks, some fruit or useful wild trees.

3d. The tract of which grant is made is of the extent mentioned in the plan which goes with the expediente, with its respective boundaries. The officer giving the possession shall cause it to be measured, according to ordinance to mark boundaries, the surplus to remain for the nation, for its uses.

4th. If he should contravene these conditions, he shall forfeit his right to the land, and that shall be denounceable.

Wherefore I order, that this present serving for title to him, and being held as firm and valid, let a registry thereof be made in the proper book, and it be delivered to the party interested, for his safety and other purposes.

Given in Monterey, on the tenth of April, one thousand eight hundred and thirty-nine; this despatch being made on common paper.

JUAN B. ALVARADO.
MANUEL JIMENO,
State Secretary.

A registry of this despatch is made in the respective book, at page second, and in proof I sign my name.

MAN'L JIMENO.

His excellency the governor has directed a registry of this title to be made in the office of the prefect of the first district.

JIMENO.

Registry is made at page 60th, and marked No. 12 of the proper book, which is in the archive of the office of the secretary of the prefect of the first district.

San Juan de Castro, April 12th, 1839.

JOSÉ MA. COVARRUBIAS.

MOST EXCELLENT SIR: The committee on agriculture, encharged to report upon the grant made to the person of José Dolores Pacheco, having viewed all the proceedings, reports, &c., offers for the deliberation of your excellency the following articles:

Art. 1st. The grant made by the m't excellent governor, Don Juan B. Alvarado, of the tract of land mentioned in same, bearing date the 10th of April, 1839, is approved.

Art. 2d. The departmental government will be pleased to order a copy of this superior approval to be issued, causing it to be directed to the party interested, for his satisfaction and knowledge.

Monterey, May 10th, 1840.

JOSÉ RAFAEL GONSALES.

MONTEREY, *May 12th*, 1840.

At the session of this day, the m't excellent departmental board approved the 1st article of the foregoing opinion, reforming the 2d in the following terms: That the present espediente be returned to H. E. the governor, for the proper ends.

JOSÉ T. FERNANDEZ, *Sec'y.*

MAN'L JIMENO, *President.*

Filed in office, March 15th, 1853.

Opinion by Commissioner Alpheus Felch.

JOSÉ DOLORES PACHECO
vs.
THE UNITED STATES.

For the place called Santa Rita, in Contra Costa county.

No original document connected with the grant or title claimed is given in evidence in this case, but a duly certified traced copy of the espediente in the archives now in charge of the surveyor general is filed.

This espediente contains a grant, made in the usual form, to the present claimant, by Governor Alvarado, dated April 10, 1839. It has upon it the certificate of José Maria Covarrubias, showing that it was recorded by him in the office of the prefectura of the first district, on the 12th April of the same year.

The deposition of said Covarrubias is on file in the case, in which he states that the entry on the back of the original grant in the surveyor general's office was signed to him at the time it bears date; that he was then secretary of the prefectura; that he had the original at the time the certificate was made in his hands; that it was the document belonging to the grantee, and that such documents were usually presented by the grantee, or sent by his order to the prefectura for record. He further testifies that he has seen the original in the surveyor general's office; that it is a loose sheet of paper, and that the signatures of the governor and secretary thereto are genuine. There is enough in this testimony to show the genuiness of the document, and that it was in fact delivered to the grantee. For some reason it has found its way back to the government archives, and has there been attached to the espediente. No judicial possession appears to have been given under the grant. The approval of the departmental assembly was given on the 12th May, 1840, but no final document in consummation of the legal title appears to have been issued to the grantee.

The condition of the grant required the grantee to build a house on the premises within one year, and that the same should be inhabited. The testimony shows no compliance with the terms of

this condition, and although he had aftewards a house upon it for his manager, it seems not to have been built from two to four years after the date of the grant. It was never occupied by the grantee, and he is not proved ever to have cultivated or made any improvements on the land. He has thus failed to perform the express terms of this grant under which he claims. He has equally failed to show that he has complied with the requirements of the regulations of 1828, under which the concession was made, to wit, inhabitancy or cultivation. He cannot, therefore, be entitled to receive from government a patent for the land. Rejected.

Filed in office April 25th, 1854.

GEO. FISHER, *Sec'y.*

Dissenting Opinion of R. Aug. Thompson.

JOSÉ DOLORES PACHECO vs. THE UNITED STATES. } No. 60.—Santa Rita.

I dissent from the opinion of the majority of the commission in this case, for the reasons set out in my dissenting opinion in claim No. 327, Anastacio Carrillo, for the place called "Punta de la Concession."

R. AUG. THOMPSON.

Filed in office Aug. 25th, 1854.

GEO. FISHER, *Sec'y.*

Decree.

JOSÉ DOLORES PACHECO vs. THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMBPELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office April 25th, 1854.

GEO. FISHER, *Sec.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified

by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-one pages, numbered from 1 to 41, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 60 on the docket of the said board, wherein José Dolores Pacheco is the claimant against the United States for the place known by the name of "Santa Rita."

In testimony whereof I hereunto set my hand, and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this thirtieth day of December, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec.*

Endorsed: Filed January 9th, 1855.
JOHN A. MONROE, *Clerk.*

Notice of Appeal.

Clerk's Office of the District Court of the United States for the northern district of California.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America, approved on the 3d of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," did on the 25 day of April, 1854, by their decision of that date, decide against the claim presented by the undersigned to the said commissioners, which claim is No. 60 on the docket of claims before said board, and is for land lying in the said northern district; and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the

year ending the 30th June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

JOSÉ DOLORES PACHECO.
By his Counsel, THORNTON & WILLIAMS.

To JOHN A. MONROE, *Clerk, &c.*

Endorsed: Filed February 8, 1855.

JOHN A. MONROE, *Clk.*

Order that this suit be hereafter proceeded in the name of John Yontz, Administrator.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Wednesday, the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Ogden Hoffman, jr., district judge, and the Honorable M. H. McAllister, circuit judge.

JOSÉ DOLORES PACHECO
vs.
THE UNITED STATES.

The death of the claimant being suggested in this case, and by consent of all parties, which was given in open court, it is ordered that this cause be revived and proceeded hereafter in the name of John Yontz, his administrator.

Endorsed: Filed June 20, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Notice of withdrawal of Att'ys.

To the Clerk of the District Court of the United States for the northern district of California:

SIR: You are hereby notified that we have withdrawn our names as attorneys in the case of José Dolores Pacheco against the United States, upon review of the decision of the U. S. board of land commissioners, claim No. 60, before said board.

July 25, 1855.

THORNTON & WILLIAMS.

[SEAL.]

Juan B. Alvarado, Gobernador Interino del Departamento de las Californias.

Por cuanto el Co. Dolores Pacheco, ha pretendido para su beneficio personal y el de su familia, el paraje comprendido entre el arroyo o Cañada de la Fasagera, y el sitio de S'n Ramon, colindante con la casa del mismo sitio de de San Ramon, hasta los palos secos y desde este punto tomando por el Tular a la Loma Alta con el

arroyo ó Cañada de dicha Fasajera, y con la sierra, y el terreno de C. Bartolo Pacheco, practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por las leyes y reglamentos, usando de los facultades que me son conferidas a nombre de la nacion Mejicana, he venido en concederle el paraje mencionado, declarando le la propiedad de el por las presentes letras, entendiore dicha consecion con entera conformidad a lo dispuesto por las leyes a reserva de la aprovacion de la ex'ma junta departamental, y del supremo gobierno y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias caminos, ni servidumbres, lo disfrutara libre y esclusivamente, destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa, y estara habitada.

2a. Cuando se le confirme la propiedad, solicitara del juez respectivo que le de posecion juridica, en virtud de este despacho, por el cual se demarcaran los linderos a cuyos limites pondra mas de las mojoneras, algunos arboles frutales o silvestres de alguna utilidad.

3a. El terreno que se le hace donacion es de la estencion que esplico el diceño que corre en el espediente, con sus limites respectivos, el juez que diere la posecion, lo hara medir conforme a ordinanza, para señalar los linderos quedando el sobrante que resulte a la nacion para los usos convenientes.

4a. Si contraviniere a estas condiciones, perdera su derecho al terreno y sera denunciable por otro.

En concecuencia mande que sirviendole de titulo el presente, y teniendose por firme y valedero; se tome razon en el libro a que corresponda, y se entregue al interesado para su resguardo y demas fines.

Dado en Monterrey, a dies de Abril de mil ochocientos treinta y nueve, estendiendose este despacho en papel comun por no haber del sellado que corresponde.

JUAN B. ALVARADO.

MANUEL JIMENO,
S'rio del Despacho.

Queda tomada razon, de este despacho, en el libro respectivo, a fojas segunda, y para constancia lo firmo.

MANUEL JIMENO.

El Exmo. Señor gobernador ha dispuesto se tome razon de este titulo en la prefectura del primer distrito.

JIMENO.

Queda tomada razon a fojas 6 v'ta y senalado con el No. 12 del libro respectivo que obxa. en el archivo de la s'ria de la prefectura del primer distrito.

San Juan de Castro, Abril 12 de 1839.

JOSÉ MA. COVARRUBIAS, *S'rio.*

4425

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the four preceding and hereunto annexed pages of tracing paper, numbered from one to four inclusive, exhibit a true and accurate copy of a portion of a certain document entitled "Espediente promovido por el ciudadado José Dolores Pacheco en pretencion de dos sitios de ganado mayor en el intermedio de la ex-mission de S'n José y el ranche del Ciudadano José Ma. Amador, 1837, 128," and now on file, and forming part of the said archives in this office.

In testimony whereof I have signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this ninth day of July, A. D. 1855.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1853.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

(Endorsed:) Exhibit A.

JNO. A. MONROE,
U. S. Commissioner.

Deposition of Thomas E. Evershed.

United States District Court, northern district of California.

JOHN YONTZ, Administrator of José Dolores Pacheco,
vs.
THE UNITED STATES.

SAN FRANCISCO, *July 14th*, 1855.

On this day, before Jno. A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Thomas E. Evershed, a witness produced on behalf of the claimants in case No. 155, being

an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 60 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, C. B. Strode, for claimants, and A. Glassell, for the U. S.

Thomas E. Evershed, being duly sworn, deposes and says: I reside in San Francisco, and my official position is that of custodian of the archives of the records in the office of the surveyor general for the State of California. I have examined the original paper brought this day from the office by myself, and the paper now marked "Exhibit A" attached to this deposition, and duly certified, is a correct copy of the original paper on file in the office of the surveyor general; the said original paper seems to be the original grant, and is such a paper as was usually delivered to the grantee. The certificate of José M. Covarrubias shows, that in obedience to the order it was recorded in the prefectura of the *of the* first district at San Juan de Castro in 1839—an unusual mode of making a record, which was done for some reason of which I am not apprized.

The archives in my possession were collected from the various offices in which they were found, in the State of California. I know the paper to have been the original paper, and not a copy.

Cross-examined.

I know the paper alluded to to be an original paper, from the signature being the same as other papers signed by the same persons.

THOS. E. EVERSHED.

Endorsed: Filed July 14, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order allowing further testimony to be taken.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the 14th day of July, in the year of our Lord one thousand eight hundred and fifty-five.

Present, Hon. M. H. McAllister, circuit judge, and the Hon. Ogden Hoffman, jr., district judge.

JOHN YONTZ, Administrator of José Dolores Pacheco, dec'd,
vs.
THE UNITED STATES.

In this case, in motion of counsel for claimant, appellant, and

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by consent of the district attorney, it is ordered, that either party have leave to take further testimony on reasonable notice.

Endorsed: Filed July 14, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

No. 155.—John Yontz, Adm'r of José Dolores Pacheco.

In this case the depositions of Robert Livermore and José M. Amador are taken and filed by consent.

Aug't 1, 1855.

A. GLASSEL,
Ass't U. S. Att'y.
V. E. HOWARD,
For Claimant.

United States District Court, northern district of California.

JOHN YONTZ, Adm'r,
vs.
THE UNITED STATES.

SAN FRANCISCO, *August* 1, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Maria Amador, a witness produced on behalf of the claimant, in case No. 155, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 60 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Hipolito Adler, a sworn interpreter.

Present, V. E. Howard, of claimant's counsel; and the U. S. att'y by A. Glassell, esq.

Deposition of Jose Maria Amador.

Question 1st by claimant. What is your name, age, and place of residence?

Answer. José Maria Amador; am 65 years of age; and reside at the mission of San José.

Question 2d. Are you acquainted with the ranch claimed in this cause; its boundaries and occupation? If yea, state what you know in relation to the boundaries, and to occupation and the cultivation of the land.

Answer. I am acquainted with said ranch, with its boundaries, the occupation and cultivation of it, &c. Its boundaries are as follows, to wit: Commencing on the southern boundary of the rancho of San Ramon, granted to José Maria Amador; from thence in a southerly direction to the "Palos Secos;" from thence, in a south-

easterly direction, by the Tular, to the top of the Lomas Altas; from thence in a northeasterly direction, to the sierra, to a point covered by chemizal; from thence, along the sierra, to the land of Bartolo Pacheco. This rancho was occupied in 1830, and has so continued up to this day, with cattle, &c., on it, by Dolores Pacheco; the ranch has been cultivated ever since 1830, and in 1844 or 1845 Dolores Pacheco built a house upon it.

Cross-examined by the U. S. Att'y.

Question 1st. Have you any interest, direct or indirect, in the event of this claim?

Answer. I have no interest whatever in the event of this claim.

Question 2d. State fully all your means of knowledge in regard to the boundaries which you have above described; also in regard to cultivation and occupation.

Answer. I have lived on the rancho adjoining the one in question all my life, and hence my knowledge of the facts of what I have before said.

his
JOSÉ MARIA ⋈ AMADOR.
mark.

Sworn to and subscribed before me August 1st, 1855.

W. H. CHEVERS,
U. S. Comm'r.

Deposition of Robert Livermore.

United States District Court, northern district of California.

JOHN YONTZ, Admin'r,
vs.
UNITED STATES.

SAN FRANCISCO, *August 1st*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Robert Livermore, a witness produced on behalf of the claimants, in case No. 155, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 60 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, V. E. Howard, esq., cl't's counsel; and the U. S. att'y, by A. Glassell, esq.

Question 1st by claimants. What is your name, age, and place of residence?

Answer. Robert Livermore; am 56 years of age; and I reside in Alameda county, Cal.

Question 2d. Are you acquainted with the ranch claimed in this

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case, its boundaries and occupation? If yea, state what you know in relation to the boundaries, the occupation and cultivation of the said land.

Answer. I am acquainted with this ranch, its boundaries, occupation, cultivation, &c. Its boundaries are as follows: Commencing in the southern boundary of the rancho of San Ramon, granted to José Maria Amador; from thence in a southerly direction to the Palos Secos; from thence in a southeasterly direction, by the Tular, to the top of Lomas Altas; from thence in a northeasterly direction to the sierra, to a point covered by chemizal; from thence along the sierra to the lands of Bartolo Pacheco.

To my knowledge this ranch has been cultivated and occupied by Dolores Pacheco ever since the year 1834; he had cattle on it then. I cultivated a portion of this land myself, by his permission, in 1836 and 1837. Pacheco died about three years ago. Since then the rancho has been occupied by his agents and servants until it was sold.

Cross-examined by U. S. Att'y.

Question 1st. Have you any interest, direct or indirect, in the event of this claim?

Answer. I have none at all.

Question 2d. State fully all your means of knowledge in regard to the boundaries which you have above described; also in regard to cultivation and occupation.

Answer. I have lived on the adjoining rancho ever since 1834, and still do; and therefore my knowledge of the facts already stated by me.

ROBERT LIVERMORE.

Sworn to and subscribed before me this 1st August, 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed August 1, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

District Court of the United States.

JOHN YONTZ, Administrator of JOSÉ DOLORES PACHECO, deceased, Appellant,
vs.
THE UNITED STATES.

The appellant respectfully represents that his claim in the above case is for a tract of land situated in the county of Contra Costa, which was granted to the original claimant, Don José Dolores Pacheco, and that the said claim was rejected by the commissioners.

easterly direction, by the Tular, to the top of the Lomas Altas; from thence in a northeasterly direction, to the sierra, to a point covered by chemizal; from thence, along the sierra, to the land of Bartolo Pacheco. This rancho was occupied in 1830, and has so continued up to this day, with cattle, &c., on it, by Dolores Pacheco; the ranch has been cultivated ever since 1830, and in 1844 or 1845 Dolores Pacheco built a house upon it.

Cross-examined by the U. S. Att'y.

Question 1st. Have you any interest, direct or indirect, in the event of this claim?

Answer. I have no interest whatever in the event of this claim.

Question 2d. State fully all your means of knowledge in regard to the boundaries which you have above described; also in regard to cultivation and occupation.

Answer. I have lived on the rancho adjoining the one in question all my life, and hence my knowledge of the facts of what I have before said.

his
JOSÉ MARIA ⋈ AMADOR.
mark.

Sworn to and subscribed before me August 1st, 1855.

W. H. CHEVERS,
U. S. Comm'r.

Deposition of Robert Livermore.

United States District Court, northern district of California.

JOHN YONTZ, Admin'r,
vs.
UNITED STATES.

SAN FRANCISCO, *August 1st*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Robert Livermore, a witness produced on behalf of the claimants, in case No. 155, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 60 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, V. E. Howard, esq., cl't's counsel; and the U. S. att'y, by A. Glassell, esq.

Question 1st by claimants. What is your name, age, and place of residence?

Answer. Robert Livermore; am 56 years of age; and I reside in Alameda county, Cal.

Question 2d. Are you acquainted with the ranch claimed in this

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case, its boundaries and occupation? If yea, state what you know in relation to the boundaries, the occupation and cultivation of the said land.

Answer. I am acquainted with this ranch, its boundaries, occupation, cultivation, &c. Its boundaries are as follows: Commencing in the southern boundary of the rancho of San Ramon, granted to José Maria Amador; from thence in a southerly direction to the Palos Secos; from thence in a southeasterly direction, by the Tular, to the top of Lomas Altas; from thence in a northeasterly direction to the sierra, to a point covered by chemizal; from thence along the sierra to the lands of Bartolo Pacheco.

To my knowledge this ranch has been cultivated and occupied by Dolores Pacheco ever since the year 1834; he had cattle on it then. I cultivated a portion of this land myself, by his permission, in 1836 and 1837. Pacheco died about three years ago. Since then the rancho has been occupied by his agents and servants until it was sold.

Cross-examined by U. S. Att'y.

Question 1st. Have you any interest, direct or indirect, in the event of this claim?

Answer. I have none at all.

Question 2d. State fully all your means of knowledge in regard to the boundaries which you have above described; also in regard to cultivation and occupation.

Answer. I have lived on the adjoining rancho ever since 1834, and still do; and therefore my knowledge of the facts already stated by me.

ROBERT LIVERMORE.

Sworn to and subscribed before me this 1st August, 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed August 1, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

District Court of the United States.

JOHN YONTZ, Administrator of JOSÉ DOLORES PACHECO, deceased, Appellant,
vs.
THE UNITED STATES.

The appellant respectfully represents that his claim in the above case is for a tract of land situated in the county of Contra Costa, which was granted to the original claimant, Don José Dolores Pacheco, and that the said claim was rejected by the commissioners.

He further avers that said claim is valid, and he accordingly prays that this honorable court so declare it, and enter a decree of confirmation.

JONES & STRODE,
Survivors of Jones, Tompkins & Strode.

Endorsed: Filed August 1, 1855.
JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion by the Hon. M. H. McAllister.

JOHN YONTZ, Adm'r of JOSÉ DOLORES PACHECO, Appellant,
vs.
THE UNITED STATES, Appellees.

José Dolores Pacheco was the petitioner before the commissioners in this case. Since then, having departed this life, John Yontz, his administrator, has, by the written consent of the assistant district attorney of the United States and of the adverse counsel, been substituted as appellant in place of deceased.

The claim is predicated upon a grant issued on 10 April, 1839, to José Dolores Pacheco, the intestate, by Governor Alvarado, and countersigned by Manuel Jimeno, as secretary.

No original document connected with the title was given in evidence before the commissioners. The evidence which they deemed sufficient to establish the existence of the original title is, to *me* their own language, as follows: "A duly certified traced copy of the expediente in the archives, now in charge of the surveyor general, is filed. This expediente contains a grant made in the usual form to the present claimant by Gen. Alvarado, on April 10, 1839. It has upon it the certificate of José Maria Covarrubias, showing that it was recorded by him in the office of prefectura of the first district on the 12 April of same year. The deposition of Covarrubias is on file in the case, in which he states that the entry on the back of the original grant, in the surveyor gen'l's office, was signed by him at the time it bears date; that he was then secretary of the prefectura; that he had the original at the time the certificate was made in his hands; that it was the document belonging to the grantee, and that said documents were usually presented by the grantee, or sent by his order to the prefectura for record. He further testifies he has seen the original in the surveyor general's office; that it is a loose sheet of paper, and that the signatures of the gov'r and the secretary thereto are genuine."

Upon the facts embodied in this statement the commissioners considered the testimony sufficient to establish the genuineness of the original documents, and establish the delivery of them to the grantee. But since the appeal has been taken, additional testi-

mony has been given before this court by which *is* has been proved that the original grant has been found in the office of surveyor general and exhibited in this court.

Thomas E. Evershed, a witness, deposes that he is the custodian of the archives of the records in the office of the surveyor general for the State of California. "That he has examined the original paper brought by him this day from the office by himself;" and he testifies that Exhibit A attached to his deposition, and duly certified, is a correct copy of the original on file in the office of the surveyor general; that said original paper seems to be the original grant, and is such a paper as was usually delivered to the grantee. He further testifies that the certificate of José Covarrubias shows that in obedience to the order it was recorded in the prefectura of the first district, at San Juan de Cortez, in 1839. The witness states that the archives in his possession were collected from the various offices in which they were found in California. "He knows the paper to have been an original and verba copy."

In view of foregoing testimony, the court considers the genuineness of original grant as established. This grant conveys to José Dolores Pacheco the place lying between the "creek or ravine" of La Tasajera and the place of "San Ramon," bounded by the house of the same place of "San Ramon," down to the dead trees, (Polor Secos;) and from this point, taking by the "Tular" to the high hill, (Loma Alta,) along the creek or ravine of said Tasajera, and along the ranged hills (Sierra) and the land of citizen Bartola Pacheco. This grant was made subject to the approval of the departmental assembly, and had the conditions or demands annexed to the Mexican colonization grants; among those was the following: "The tract of which grant is made is of the extent mentioned in the place which goes with the expediente, with its respective boundaries; the officer giving the possession shall cause it to be mentioned according to ordinance to mark boundaries, the surplus to remain to the nation for its uses. The petition on which grant was predicated asked for two leagues (sitios) of land, more or less, and has annexed to it a plan of the land petitioned for, to which it refers.

The commissioners rejected the claim upon the ground that the grantee had not built a house on the premises until from two to four years after the date of the grant; that ne never inhabited or occupied the premises, and had thus failed to comply with the conditions of the grant, or fulfil the consideration for which it was made, inhabiting and cultivating the land.

The conclusion at which the commissioners arrived on this point was derived from the evidence before them. That consisted of the testimony of a single witness.

Salvador Pacheco testified that the grantee had occupied the said tract with his cattle for many years; that he had a house

upon it for ten or twelve years occupied by a manager; that he had cattle upon it, with Señor Amador's, before that time; that about ten or twelve years since S'r Amador's cattle *was* divided from those of the grantee, since which time the grantee occupied the tract exclusively, that of Amador having been placed on land granted to him.

This testimony does not establish the erection of a house within a year from the date of the grant, and the occupancy of the land by a manager, and using it as ranging ground for cattle, was not, in the opinion of a majority of the commissioners, such cultivation and occupancy as came within the meaning of the Mexican colonization laws. The single omission to build a house within the year cannot forfeit the grantee's rights, and this court finds it unnecessary to pass directly upon the point decided by a majority of the commissioners, because there has been sufficient testimony taken in this court, which establishes, in its opinion, a substantial compliance with the colonization laws.

José Maria Amador testifies that the ranch had been cultivated since 1830, and in 1844 or 1845 grantee built a house on it; that witness lived on the adjoining ranch all his life, and hence his means of knowledge on the subject.

Robert Livermore, another witness, testifies that he is acquainted with the ranch of the grantee, and after giving the boundaries of it, states that to his knowledge the ranch had been cultivated and occupied by the grantee since the year 1834. He further testifies that he (the witness) cultivated a portion of the land by permission of the grantee in 1836 and in 1837, and that the grantee died about three years ago; since then the rancho has been occupied by his agents and servants, until it was *sued*. On his cross-examination, witness states he has no interest in the case, and that his knowledge of the facts is derived from his residence since 1834 on an adjoining ranch. This additional testimony establishes in the mind of this court a substantial compliance by the grantee with the policy and object of the colonization laws of Mexico, and that at no time did the grantee contemplate an abandonment of his claim. The omission to build a house within one year after the date of his grant cannot entirely invalidate this claim. The approval of the departmental assembly to such grant was given on 12th May, 1840, but no judicial possession was obtained. This latter circumstance cannot, under the facts of this case, operate to *defect* this claim, and the decision of the commissioners against the validity of this claim must be therefore reversed.

Decree.

United States District Court, northern district of California.

JOHN YONTZ, Administrator of José Dolores Pacheco, vs. THE UNITED STATES. } No. 155, Decree—Stated term, August 13th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause came on to be heard before a stated term of this court on appeal from the final decision of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved 3d March, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and on additional testimony before this court; and counsel for both parties having appeared, whereupon it is hereby ordered, adjudged and decreed, that said decision of the said commissioners be in all things annulled and reversed; and it is hereby further ordered, adjudged and decreed, that the claim of appellant is valid to the land described in the boundaries mentioned in the grant, copy of which is on file in the transcript of the record, and delineated in a map or plan annexed to the expediente and referred to in the said grant to the extent of two square leagues, (sitios) if such quantity be contained within such boundaries; and in case there be less than said quantity of two square leagues within said boundaries, then the claim of said appellee to said less quantity is hereby adjudged and decreed to be valid.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dist. of Cal'a.
OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge.

Endorsed: Filed August 13th, 1855.
JOHN A. MONROE, *Clerk.*

Affidavit of Sam'l B. Martin on motion to correct Decree.

In the District Court of the United States for the northern district of California.

JOHN YONTZ, Administrator of José Dolores Pacheco, Appellant, vs. THE UNITED STATES.

Personally appeared the undersigned, Samuel B. Martin, who

being duly sworn, says, that he claims a portion of the land confirmed in the above stated case, by regular conveyances from Juana Pacheco, the wife and only heir of said José Dolores Pacheco, deceased, the original grantee; that it will be seen from reference to the original grant in this case filed, that it is a grant of a specified tract of land within certain natural boundaries, without any mention of quantity, or any restriction as to the amount of land; that the only portion of the title-papers in which the amount or quantity of leagues is mentioned is in the petition, in the following words: "José Dolores Pacheco, residing in the town of San José, before your honor, in form of law, represents, that in the year 1834 he put to the knowledge of the governor of the territory, the late Don José Figuera, the great necessity he had for one or two leagues of land (sitios de ganado mayor) in the place lying between the mission of San José and the neighbor José Maria Amador. There was then no decree in my favor, but that which I humbly annex hereto; and as it might have happened that the expediente is mislaid, with such an apprehension I bring up the present for justification by your honor, in order that, should it be so, this may do to prove it, and for original. At this time, I confine the application for two leagues, more or less, according to the said Amador, by the north, and the known boundaries of the mission of San José by the south, the plan of which I enclose herein again.

This tract was unoccupied for many years before the time when I solicited it up to the present; and on seeing that there were good reasons that the gentlemen commissioner by the said mission thinks of occupying it with cattle stock, I ought to be preferred to him; and therefore, without further delay, I only hope the resolution of the authorities require of right in the case.

Novb'r 30th, 1837.

(Signed) JOSÉ DOLORES PACHECO.

Affiant states that there is within said boundaries of the grant as executed, about three or four leagues.

SAM'L B. MARTIN.

Sworn to and subscribed, March 30th, 1857, before me.

W. H. CHEVERS,
Deputy Clerk.

Endorsed: Filed May 25, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Motion for an Appeal.

United States District Court, northern district of California.

JOHN YONTZ, Administrator of José D. Pacheco, vs. THE UNITED STATES. } D. C. 155.—L. C. 60.

P. Della Torre, United States district attorney for said district:

Please take notice, that on Wednesday next, or as soon thereafter as the motion can be heard, I will move in said district court on behalf of the plaintiff for an appeal to the Supreme Court of the United States, from the judgment and decree heretofore entered in said case, and tender security for the same.

November 16th, 1857.

V. E. HOWARD,
For Appellant.

Copy served.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed November 16th, 1857.
JOHN A. MONROE, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. JOSÉ DOLORES PACHECO. } No. 155, D. C.—No. 60, L. C.

In this case, on the application of the attorney for claimant made in open court, it is ordered by the court, that an appeal in behalf of the claimant from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, and depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay, and that the claimants give security in the sum of two hundred dollars for costs, in the district and Supreme Courts, in case the judgment of the said district court shall be affirmed.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed November 19th, 1857.
JOHN A. MONROE, *Clerk.*